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Tax-Exempt Financing of Churches, Parochial Schools and Other Sectarian Institutions After Trinity Lutheran Church: Permitted? Required? Let us Pray for Answers.

The U.S. Supreme Court's June 26 opinion in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, precluding states from discriminating against churches in at least some state financing programs, raises anew the question of whether states may, or are required to, provide tax-exempt conduit bond financing to churches and other sectarian institutions. The Supreme Court's decision further complicates an already complicated analysis of that question by bond counsel, and in some instances may tip bond counsel's answer in favor of green-lighting tax-exempt financing of some capital projects of sectarian institutions.

The First Amendment to the U.S. Constitution precludes Congress and, via the Fourteenth Amendment, states from legislating the establishment of religion (the "Establishment Clause"), or prohibiting the free exercise thereof (the "Free Exercise Clause"). Under a line of Supreme Court cases that has been cast into doubt but never expressly repudiated by a majority of the U.S. Supreme Court, the Establishment Clause has been held to prohibit state financing of "pervasively sectarian" institutions, i.e. institutions that "are so 'pervasively sectarian' that secular activities cannot be separated from sectarian ones." *Roemer v. Board of Publ. Works of Maryland* (1976).

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By Len Weiser-Varon on June 27, 2017

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